

YUKON SERVICE, INC.

IBLA 75-596

Decided October 15, 1975

Appeal from decisions of Alaska State Office, Bureau of Land Management, rejecting 18 oil and gas lease offers.

Affirmed.

1. Alaska: Land Grants and Selections: Generally -- Oil and Gas Leases: Applications: Generally

The mere filing of a noncompetitive oil and gas lease offer does not invest the offeror with any right to receive a lease. The only right created thereby is the right to an appropriate priority of consideration if, at the discretion of the Department, an oil and gas lease is to be issued for the land which is the subject of the offer, but it will not preclude the filing of a subsequent state selection application, nor bar approval of the state's application and the issuance of a patent to the state.

2. Alaska: Land Grants and Selections: Applications -- Applications and Entries: Filing -- Oil and Gas Leases: Applications: Generally -- Public Records -- State Selections

The notation on land office records of a noncompetitive oil and gas lease application does not prevent the State of Alaska from selecting the land pursuant to the Alaska Statehood Act.

APPEARANCES: Max Barash, Esq., Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Yukon Service, Inc., appeals from the March 28 and April 3, 1975, decisions of the Alaska State Office, Bureau of Land Management (BLM), which rejected 18 oil and gas lease offers, F 723, 724, 731-746. All 18 offers were filed on January 18, 1968, for land in Ts. 5 and 6 N., Rs. 7 and 8 E., Umiat Meridian, Alaska. On January 26, 1968, appellants were notified that the offers conflicted with Native protest F-035257 and that no further action would be taken on the offers until resolution of the protest. On December 9, 1968, the State of Alaska filed a selection application for all of the lands under oil and gas lease application. On January 17, 1969, all public land in Alaska was withdrawn from mineral leasing by PLO 4582, 34 F.R. 1025 (1969). Oil and gas lease offers then on file were to be held in abeyance by the BLM until the enactment of legislation settling native claims. That legislation, the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. III, 1973), was enacted on December 18, 1971. Pursuant to that Act, on March 15, 1972, the land was again withdrawn from the effect of the mineral leasing laws. On March 27, 1974, all the land involved was tentatively approved for selection and patented to the State of Alaska. On March 28 and April 3, 1975, the Alaska State Office, BLM, rejected all of appellant's applications for the patented lands because 1) the pertinent regulation, 43 CFR 2627.3(b)(2), so requires, and 2) the federal government no longer has jurisdiction over the land.

Appellant puts forth a number of arguments, most of which depend on the thesis that 43 CFR 2627.3(b)(2) is invalid because it is contrary to section 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(c) (1970), or contrary to other provisions of law.

[1] For example, appellant argues that 43 CFR 2627.3(b)(2) repeals section 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1970). The regulation, 43 CFR 2627.3(b)(2), provides in part:

* * * Conflicting applications and offers for mineral leases and permits, except for preference right applicants, filed pursuant to the Mineral Leasing Act, whether filed prior to, simultaneously with, or after the filing of a [state] selection under this part will be rejected when and if the selection is tentatively approved by the authorized officer of the Bureau of Land Management in accordance with paragraph (d) of this section.

Section 17 of the Mineral Leasing Act provides that a noncompetitive oil and gas lease shall be issued to the first qualified offeror. However, it also provides that the Secretary may lease oil and gas deposits. The Supreme Court has held that the Secretary has the discretionary authority under this section to determine whether to issue a lease. Udall v. Tallman, 380 U.S. 1, 4 (1965). It is clear that if the Department issues a noncompetitive oil and gas lease, the lease must be issued to the first qualified applicant. It is equally clear, however, that the Secretary may decide to dispose of the land in accordance with other provisions of law, and, in particular, he may patent the land to the State of Alaska pursuant to provisions of the Alaska Statehood Act, 72 Stat. 339, 48 U.S.C. notes preceding § 21 (1970). Schraier v. Hicke, 419 F.2d 663, 667 (D.C. Cir. 1969). Furthermore, as we have noted in several cases:

The allowance of a state selection application furthers the discharge of the federal obligation to fulfill the State's statutory entitlement, and, generally, it will be preferred in the public interest over the discretionary application of one who does not have an entitlement of equal dignity.

Mountaineering Club of Alaska, 19 IBLA 198, 200 (1975); C. Burglin, 21 IBLA 234 (1975).

[2] Appellant also argues that the notation of oil and gas lease applications on land office records segregated the land from any form of state selection citing State of Alaska, 6 IBLA 58, 66, 79 I.D. 391, 395 (1972). We do not agree. The pertinent regulation, 43 CFR 2627.3(b)(2), provides that land may be selected by a state after an application for a mineral lease has been filed for the land.

The balance of appellant's arguments are dealt with in C. Burglin, *supra*; Richard W. Rowe, 20 IBLA 59, 82 I.D. 174 (1975); 1/ Yolana Rockar, 19 IBLA 204 (1975); Lloyd W. Levi, 19 IBLA 201 (1975). None of appellant's arguments warrant a change in the conclusions in those cases.

1/ Suit for judicial review pending. Rowe v. Secretary of the Interior, Civ. No. 75-1152 (D.D.C.).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Edward W. Stuebing
Administrative Judge

I concur:

Joan B. Thompson
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I concur in the majority opinion and would emphasize that after the lands were patented to the State, the Department lost jurisdiction thereover. Richard W. Rowe, supra at 81.

Joseph W. Goss
Administrative Judge

